APPENDIX A

Organic Laws Involved

I. Declaration of Independence

". . . We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed,—that whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

II. Constitution, Art. I, Sec. 9(7)

"No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

III. Constitution, Art. II, Sec. 1-3

Sec. 1. "The executive power shall be vested in a president of the United States of America. . . . Before he enter on the execution of his office, he shall take the following oath or affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States.'"

Sec. 2. "The president shall be commander in chief of the army and navy of the United States, and of the

militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

"He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper in the president alone, in the courts of law, or in the heads of departments. . . ."

Sec. 3. "He shall, from time to time, give to the Congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; . . . he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States."

IV. Constitution, Art. VI

". . . This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; . . ."

". . . and all executive and judicial officers both of the United States and of the several states, shall be

bound by oath or affirmation, to support this constitution. . . ."

V. Constitutional Amendment, Art. IX

"The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people."

VI. Constitutional Amendment, Art. X

"The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

APPENDIX B

(Filed April 24, 1959)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,056

WILLIAM A. ALBAUGH, *Appellant*,

v.

WILLIAM P. ROGERS, Attorney General of the United States, *Appellee*.

Motion to Affirm

Comes now the appellee by its attorney, the United States Attorney, and moves the Court to affirm the judgment below.

A motion to affirm lies where dismissal of a complaint by the trial court is plainly correct. The questions raised by appellant, summarized in the attached memorandum of points and authorities, are clearly so unsubstantial as

not to require further argument in addition to that fully accorded by the trial court.

/s/ OLIVER GASCH
Oliver Gasch,
United States Attorney.

/s/ CARL W. BELCHER
Carl W. Belcher,
Assistant United States Attorney.

CERTIFICATE OF

/s/ JOHN D. LANE
John D. Lane,
Assistant United States Attorney.

Memorandum of Points and Authorities in Support of Motion to Affirm

Appellee successfully moved to dismiss the action below on the ground that "the complaint fails to state a claim upon which relief may be granted, in that the plaintiff has no standing to sue" (J.A. 6). The complaint seeks a judgment declaring unconstitutional Executive Order No. 10728, a main purpose of the President therein being to promote the efficiency of the Government service by regulating charitable solicitations, traditionally permitted;[1]

[1] The order creates the President's Committee on Fund-Raising within the Federal Service. Exec. Order No. 10728, 22 Fed. Reg. 7219 (1917); J.A. 3-6. As the preamble recites, a main purpose of the order is to provide uniform standards governing charitable solicitations in the interest of their being conducted "in such manner as will occasion minimum interruption of Government functions" (J.A. 3). To achieve this end a "uniform fund-raising program" is required and the number of solicitations restricted (J.A. 3). Solicitations are to be conducted in such manner that "Persons on duty shall be subjected to a minimum of disturbance" (J.A. 4). Record-keeping and administration are to be "kept to a minimum", and the order provides that no additional compensation be paid officers and employees of the Government for services under the order (J.A. 4, 6).

also sought is an injunction restraining the Attorney General from conducting fund-raising campaigns among federal employees in accordance with the executive order (J.A. 2).

There is no allegation that a judicial controversy arises (if any could) by virtue of the application of the order to appellant; he does not claim to be a federal civil servant. The complaint states no statute authorizes fund-raising among federal employees, the gravamen of the allegation being that diversion of civil servants from other duties is in effect an unauthorized "use of Public Funds" (J.A. 2). Appellant asserts equitable jurisdiction to enjoin execution of the order by the Attorney General rests on appellant's alleged interest as a "citizen and taxpayer" in executive activities allegedly unauthorized by the Constitution (J.A. 2).

From the foregoing it is immediately clear that, as the court below ruled, appellant has no standing. To invoke the power of constitutional review

> "The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

Massachusetts v. *Mellon*, 262 U.S. 447, 488 (1923). See also *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240 (1937).

Appellant urges (Br. 6) that application of the above principle in such cases as the present one would be to substitute a rule of force for one of law. This contention puts out of view the nature of judicial power conferred in our tripartite form of government. To have standing in court individuals "must show an injury or threat to a particular right of their own, as distinguished from the

public's interest in the administration of the law." *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 125 (1945). Questions which are abstract in judicial forums, such as here the wisdom of the utilization of executive subordinates by the President, are for decision by the people through their representative electorate. See *Massachusetts* v. *Mellon*, supra at 488.

A motion to affirm lies where dismissal of a complaint below is plainly correct. *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923). The questions raised by appellant, summarized above, are clearly so unsubstantial as not to require further argument in addition to that fully accorded by the trial court.

/s/ OLIVER GASCH
Oliver Gasch,
United States Attorney.

/s/ CARL W. BELCHER
Carl W. Belcher,
Assistant United States Attorney.

/s/ JOHN D. LANE
John D. Lane,
Assistant United States Attorney.

Memorandum of Points and Authorities in Opposition to Motion to Affirm

1. Prior to this administration, charitable solicitations within the Government Service had never been officially permitted. And in many Government buildings there had been posted signs saying that no soliciting was permitted.

2. Executive Order No. 10728 specifies that "Persons on duty shall be subjected to a minimum of disturbance" (App. 4) and that record-keeping and administration are to be "kept to a minimum". Taking the Government's

own definition of efficiency, the optimum condition is to have no solicitation program at all. Efficiency then would hardly be a justification for officially recognizing and introducing the solicitation program for the first time.

3. If there is no Constitutional or Congressional Law which authorizes the solicitation program, the Executive Order No. 10728 comes into direct conflict with Constitutional Amendment X.

/s/ WILLIAM A. ALBAUGH
William A. Albaugh,
Appellant, Pro Se.

Before: Wilbur K. Miller, Danaher and Burger, *Circuit Judges,* in Chambers.

Order

Upon consideration of appellee's motion to affirm and of appellant's memorandum of points and authorities in opposition, it is

ORDERED by the court that the judgment of the District Court appealed from herein is affirmed.

Per Curiam

Dated: May 11, 1959

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

Filed May 11, 1959

JOSEPH W. STEWART
Clerk